IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4129 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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SAIYED MUNIR ALI AHMEDMIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4129 of 2002

DR. MUKUL SINHA with MR MTM HAKIM for Petitioner No. 1-3

MR KAMAL TRIVEDI, ADDL. ADVOCATE GENERAL with MR ARUN OZA, GOVERNMENT PLEADER for Respondent No. 1-3

MR AD OZA for Respondent No. 4

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 17/04/2002

ORAL JUDGEMENT

The petitioners are parents of students who are to appear at Std. X or XII examinations, which are to be

conducted by respondent No. 4 Board on and from 18.4.2002. It has been submitted by the petitioners that on account of communal disturbances prevailing in the State of Gujarat, it might not be safe for their children to attend the examination centres notified by the respondent Board and the minority community students should be given an option to appear at centers which are situated in a locality which is predominantly occupied by the minority community.

2. It has been submitted by learned advocate Dr. Mukul Sinha appearing for the petitioners that initially the Board was to conduct the examinations on 18th March 2002 but on account of disturbances prevailing in the State, the examinations had been postponed and they are now to commence from 18.4.202. It has been submitted by him that formerly, when the examinations were to be held on 18.3.2002, the examination centres were different. Details of the said centres have been given in Para 10(D) of the petition. It has been submitted that now the said examination centres have been changed and details of new centres have been given in Para 6(A) of the petition. According to him, the locality wherein the new examination centres are situated are not predominantly occupied by minority community and therefore children of the petitioners, who belong to minority community, would not find it safe to go to those centres and therefore the children of the petitioners should be given an option so as to enable them to appear at the examination centres which were selected earlier or at the centres which have been selected now. It has been further submitted by him that there was no justifiable reason for changing the examination centres. It has been also submitted by him that a representation was made by the petitioners to respondent No. 2-District Education Officer, Baroda, for changing the centres so that there may not be any sense of insecurity among the students while going to distant places for appearing at the examinations but the said representation dated 9.4.2002 has not been entertained by respondent No. 2.

3. It has been submitted by him that looking to the law laid down by the Hon'ble Supreme Court in the case of Dalmia Cement (Bharat) & Anr. v. Union of India and Ors., 1996(10) SCC 104, it is the duty of the Government authorities to give sufficient protection to the minorities and therefore also the respondent authorities should give an option to the children of the petitioners to appear either at the centres which were selected earlier or at the centres selected now.

4. Thus, in a nutshell, it has been submitted by Dr. Sinha that so as to see that the children belonging to minority community feel safe and secured, they should be given an option to appear either at the centres which were selected earlier or at the centres which have been selected at present.

5. Learned Government Pleader Shri Arun Oza has appeared for the respondents as a copy of this petition was given in advance to the office of the Government Pleader.

6. The learned Government Pleader has submitted that it is not possible to give an option as prayed for by the petitioners to the children of the petitioners or to other students because it would create several administrative difficulties as all arrangements for conducting the examinations at the centres notified by the respondent Board have been made. It has been submitted that a Bar Coding system is being followed by the Board so as to see that identity of the students is not known to the examiners and if any change is made in the centres at this stage, the entire system might either fail or it might become extremely difficult to conduct the examinations on 18.4.2002. Thus, according to him, in such a short period it is not possible to make changes in the centres as suggested by the petitioners and it would also not be in the interest of the students to postpone the examinations.

7. Moreover, the Government Pleader has submitted that sufficient arrangements have been made for transportation of the students and there should not be any reason for the students or their parents to worry about safety of the students. It has been submitted by him that buses with police personnel equipped with automatic weapons would pick up the students of a particular locality from different pick up points of the locality and shall carry the students to the examination centres and upon completion of the examinations, the students shall be taken back to the point from which they were picked up with proper escort. The pick up points selected by the concerned authority are many and therefore most of the students would find it very convenient as well as safe to go to the examination centres directly from their locality. So as to see that the students feel more safe and secured, it has been also decided that certain teachers teaching in minority schools situated in that locality should also be with the students in the buses which would take the students to the examination centres. He has given details with

regard to the pick up points from which the students would be boarding the buses and, therefore, according to him, there is no reason for the petitioners or other parents of the students, who are to appear at the examinations, to worry about the security of their children. The details with regard to the pick up points have been placed on record of this court and a copy thereof has been given to the learned advocate appearing for the petitioners. Moreover, the pick up points are to be given due publicity so that the students can know about the same.

8. On merits, it has been submitted by him that under the provisions of sec. 17(46) of the Gujarat Secondary Education Act, 1972, it is open to the Board to do the needful for carrying out the purpose of the Act and therefore a letter was addressed by the Board to the State of Gujarat in Education Department on 11.1.2002 for the purpose of constitution of examination committees and in puruance thereof the State of Gujarat has constituted District Examination Committee for each district. One such committee has also been constituted for District Baroda, with the Collector, Baroda as its Chairman. The Commissioner of Police, Baroda, a Member of the Board, eminent teachers and eminent principals who have been awarded national awards, office bearers of recognised associations of teachers, principals and managements, District education Officer, Baroda, and District Primary Education Officer, Baroda are other members of the said committee. The said committee had convened its meetings from time to time and after due deliberation and careful consideration and after considering the situation prevailing in the city, it had suggested certain centres where the examinations should be held. According to the learned Government Pleader, in a meeting of the District Examination Committee, which was held on 7.4.2002, even the Chairman of respondent No. 4 Board had remained present and in consultation with the committee members, the Board had decided to change the examination centres and accodingly, the centres which have been selected at present were determined. According to him, the committee has been constituted under Government Resolution dated 16.2.2002 passed by the State of Gujarat in Education Department and looking to the prevailing situation, the Board was of the view that with the help of the members of the committee, who are highly responsible officers or who are very much concerned with the education of the students, the Board would be in a better position to take proper decision. Moreover, it has been also submitted by him that a high level committee has also been constituted consisting of the Secretary, Education Department as its

Chairman, Chairman of the Board, Secretary, Home Department or his representative, Addl. Secretary (Secondary), Education Department, Commissioner, Mid-day meal scheme and schools, and Director of examinations, Gujarat Secondary Education Board. The Board also used to be in touch with the said high level committee and as stated hereinabove, final decision with regard to change of the centres has been taken in consultation with the committee referred to hereinabove.

9. It has been concluded by the learned Govt. Pleader by saying that it would not be in the interest of the studetns appearing at the examinations to make any change in the examination programme or the examination centres. It has been submitted by him that looking to the situation prevailing in the city of Ahmedabad, the Board had decided to make some changes in the centres. He has thus made an effort to show that if necessary the Board would have made changes in the centres but looking to the facts and situation prevailing in Baroda city, according to the Board, it is not necessary to make any change in the centres which have been now selected. He has given an instance of change of centres at Ahmedbad to show that the Board was not taking any rigid view or was not adamant on continuing the centres which have already been decided in consultation with the District Examination Committee on 7.4.2002.

10. I have heard the learned advocates at length. Looking to the facts of the case, in my opinion, it would not be proper for this court to have a judicial review of the decision taken by the Board. It is pertinent to note that the Division Bench of this court on 18.3.2002, while dealing with the matter pertaining to the same examinations, observed in the judgment delivered in Special Civil Application No. 3389 of 2002 that

> "Holding of examinations is within the domain of the Board and the Government, and need not be regulated by the courts. There is no reason to assume that the statutory authorities will be oblivious to the needs of the time and the situation."

Looking to the law laid down by this court and more particularly looking to the fact that the task of selection of examination centres has been undertaken by the Board in consultation with the District Examination Committee constituted under Government Resolution dated 16.2.2002, and more particularly when the committee is consisting of experts from different fields, in my

opinion, it would not be proper for this court to interfere in the matter of selection of examination centres or to give any option to the students for appearing at different centres as prayed for in the petition.

11. Even the Hon'ble Supreme Court, while dealing with the subject of judicial review of administrative decisions, in case of State of U.P. and ors. v. Maharaja Dharmander Prasad Singh etc., AIR 1989 SC 997, has observed that judicial review under Art. 226 cannot be converted into an appeal. Judicial review is directed not against the decision but is confined to the examination of the decision making process. It has been observed by the Hon'ble Supreme Court that

> "When the issue raised in judicial review is whether a decision is vitiated by taking into account irrelevant, or neglecting to take into account of relevant, factors or is so manifestly unreasonable that no reasonable authority, entrusted with the power in question could reasonably have made such a decision, the judicial review of the decision making process includes examination, as a matter of law, of the relevance of the factors."

In view of the above observations made by the Supreme Court, one has to see whether the Board, while taking the decision with regard to change of centres, had taken into account all relevant factors or whether the process of taking the decision was so unreasonable that no reasonable authority could have adopted the method adopted by the Board. As stated by the learned Govt. Pleader, the decision of the Board has been taken in consultation with the District Examination Committee consisting of the most responsible officers of the District, eminent teachers and principals, District Education Officer, Baroda, District Primary Education Officer, Baroda and office bearers of the associations of teachers, principals and representatives of institutions managing different schools. In my opinion, it cannot be said that the manner of taking the decision with regard to change of centres was improper. It cannot be said that irrelevant factors were considered by the Board while taking the decision in consultation with the committee or it cannot be said that the manner of taking the impugned decision is manifestly unreasonable.

12. The learned Government Pleader has given details with regard to the arrangements which have been made by the Board for taking the students from their localities to the examination centres with proper escort and in company of their teachers. In my opinion, when such arrangements have been made so as to see that the students travel from their localities to the examination centres with security and in company of their teachers, with whom normally the students are quite close, it cannot be said that the Board did not think about safety or security of the students. Looking to the said facts, in my opinion, it cannot be said that the Board and other government authorities are oblivious to the safety and security of the students who are to appear at the examinations.

13. It is also clear that the decision with regard to change of centres was taken in consultation with very responsible officers concerned with maintenance of law and order and education of the students. I do not think that the Board could have had any better method of selection of examination centres. The argument of learned advocate Dr. Sinha appearing for the petitioners that there was no reason for changing the examination centres is not proper because only after consulting the members of the committee and looking to the prevailing situation, the Board had taken the decision with regard to changing the examination centres in April, 2002. As observed by the Supreme Court, this court has to simply see whether the manner in which the decision has been taken is just and proper and whether the Board had considered all relevant factors while taking its decision with regard to change of examination centres and about selection of the examination centres. Looking to the facts of the case, in my opinion, the manner in which the decision has been taken is most reasonable and proper.

14. As time was not sufficient to enable the respondent authorities to file an affidavit in reply, the learned Government Pleader has shown certain documents to the court as well as to Dr. Sinha. Contents of the said documents have been referred to hereinabove. Upon perusal of the said record and after hearing the learned advocates, I am convinced that a very good system has been evolved by the Board for the purpose of transportation of the students from certain pick up points to the examination centres. As the transportation provided to the students is to be guarded by police personnel having automatic weapons and as teachers of the students are also to accompany the students, in my opinion, the petitioners should not have any sense of

insecurity for their children.

15. Learned advocate Dr. Sinha has made certain observations with regard to change of centers in Godhra city which was affected by communal disturbances. He has relied on a newspaper report to show that several students had remained absent on the first day of the examinations but after changes were made by the Board in the examination centers on the next day, number of students who had appeared at the subsequent examinations had been substantially increased. The facts reflected in the newspaper cutting have not been substantiated by the statistical data put on record by the respondent.

16. Looking to the fact that the examinations are to take place on 18.4.2002 and as all possible arrangements have been made by the Board, in my opinion, this court would not like to have judicial review of the decision taken by the Board, which otherwise also appears to be quite sound. It would be extremely difficult for this court to decide whether examination centres should be kept at place A or B. The government officers like the Police Commissioner, Collector, DEO, DPEO; eminent teachers and persons who are concerned with the education of the students have participated in the process of taking the decision with regard to selection of examination centres and when, after considering all factual aspects, the Board has taken a decision to have certain examination centres, in my opinion, this court would not like to interfere with the final decision taken by the Board.

17. In the circumstances, the petition is rejected.

(A.R. Dave, J.)
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